IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9477 OF 2004

Madhya Pradesh Industrial
Development Corporation
Limited, a Fully State Owned
Company incorporated under the
Companies Act, 1956 having its
Registered office at A.V.N. Towers,
Plot No.192, Zone-I, Maharana
Pratap Nagar,Bhopal,
Madhya Pradesh 462 011 ...Petitioner

Versus

The Mumbai District Central
Co-Operative Bank Limited,
a Co-operative Bank incorporated
under the Maharashtra Co-operative
Societies Act, 1960 having its
Head office at Mumbai
Bank Bhavan, 207,
Dr.D.N. Road, Fort,
Mumbai 400 001 ...Respondent

ALONGWITH

WRIT PETITION NO. 9859 OF 2004

The Mumbai District Central
Co-Operative Bank Limited,
a Co-operative Bank incorporated
under the Maharashtra Co-operative
Societies Act, 1960 having its
Head office at Mumbai
Bank Bhavan, 207,
Dr.D.N. Road, Fort,
Mumbai 400 001 ...Petitioner

Versus

Madhya Pradesh Industrial State

Development Corporation
Limited, a Company incorporated
under the Companies Act, 1956
having its Registered office
at AVN Towers, Plot No.192,
Zone-I, Maharana Pratap Nagar
Bhopal, Madhya Pradesh 462 011 ...Respondent

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Mr.R.N.Singh, Advocate General for State of Madhya Pradesh with Mr. Shashi Jain, Ms. D. Desai, Mr.Agarwal, Mr. Pawar with Law Officer Ms. Menon and Gupta for the Petitioner in Writ petition No. 9477 of 2004 and for Respondent in writ petition No.9859 of 2004.

Mr. V.A. Thorat, the Senior counsel with Mr.A.D. Sugdare i/b M/s. Mahimtura & Co. for Respondent in Writ petition No. 9477 of 2004 and for Petitioner in writ petition No. 9859 of 2004.

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CORAM: B. H. MARLAPALLE, J.

DATED OF RESERVING THE JUDGMENT : 02.02.2005

DATE OF PRONOUNCING THE JUDGMENT : 08.02.2005

JUDGMENT:-

1. These cross petitions challenging the order of Maharashtra State Co-operative Appellate Court at Mumbai in Revision Application No.194 of 2003 passed on 28.9.2004 whereby the challenge to the order passed by the Co-operative Court No.1 at Mumbai passed on 4.4.2003 came to be partly allowed, are being decided by this common judgment.

2. Heard Shri. R.N. Singh, the learned Advocate General for the State of Madhya Pradesh with Mr.

Shashi Jain for the Madhya Pradesh Industrial Development Corporation Ltd. (hereinafter referred to as "The Corporation" for the sake of brevity), the petitioner in writ petition No. 9477 of 2004 and respondent in writ petition No. 9859 of 2004 and Mr. V.A. Thorat, the learned senior counsel with Mr. A.G. Sugdare i/b. Mahimtura and Company for the Mumbai District Central Co-operative Bank Ltd. (hereinafter referred to as "the Bank" for the sake of brevity) the respondent in writ petition No. 9477 of 2004 and petitioner in writ petition No. 9859 of 2004.

3. Rule. The respective parties waive service. By consent, Rule was taken up for final hearing forthwith.

4. The first petition has been filed by the Corporation which is the opponent and the second petition has been filed by the Bank which is the disputant in case No. CC-I/325/2002 filed before the Ist Co-operative Court at Mumbai. The said dispute under Section 91 has been instituted by the Bank as a summary proceedings under Section 94(4) of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as "the Act") and Rule 77-F of the Maharashtra Co-operative Societies Rules, 1961 (hereinafter referred to as "the Rules"), for the

recovery of an amount of Rs.100.00 Crores which at had invested by way of deposits with the opponent-Corporation, with interest at the rate of 16% per annum as agreed at the time of initial contract between the parties. The said dispute was filed on or about 20.11.2002, as the Corporation allegedly failed to honour the demands of recovery on or about 12.12.2002 and in the said proceedings, without filing its written statement, the opponent-Corporation submitted an application for leave to defend unconditionally. The said application was opposed by the Bank by filing its say and after hearing both the parties, the learned judge of the Co-operative Court No.1 at Mumbai by his order dated 4.4.2003 was pleased to allow the said application and leave was granted to defend unconditionally. The Bank, therefore, approached the Maharashtra State Co-operative Appellate Court in Revision, as mentioned hereinabove. The Revision Court did not agree with the view taken by the Co-operative Court and by considering that the Corporation is a State Undertaking, took a sympathetic view and more particularly having regards to its purported precarious financial conditions leave to defend was granted subject to payment of Rs.25.00 Crores within two months from the date of the order i.e. 20.9.2004.

5. The learned Advocate General appearing for the Corporation submitted that the Co-operative Court being the Court of first instance had considered all the issues raised and being satisfied that the disputant Bank was required to prove beyond doubt on the point of jurisdiction, limitation, territorial jurisdiction, it had granted leave unconditionally and, therefore, it was not permissible for the Revision Court to interfere with the view taken by the trial Court. The Revision Court fell in serious error apparent on the face of the record and proceeded to answer some of the preliminary issues like jurisdiction etc. and decided them finally. The Revision Court proceeded on certain presumptions which are not supported from record. While challenging the impugned order, the learned Advocate General placed reliance on the following decisions:-

i) M/s. Mechalec Engineers & Manufacturers Vs. M/s Basic Equipment Corporation, AIR 1977 Supreme Court 577.

ii) Santosh Kumar Vs. Bhai Mool Singh, AIR 1958 SC 321.

iii) Milkhiram (India) Private Ltd. and others Vs. Chamanlal Brothers, AIR 1965 SC 1698.

iv) Sunil Enterprises and Anr. Vs. S.B.I. Commercial and International Bank Ltd., (1998) 5 SCC 354 and

v) John Impex (P) Ltd. Vs. Sureinder Singh and Ors., (2003) 9 SCC 176.

6. The learned Senior counsel appearing for the disputant Bank, on the other hand, while supporting the findings recorded by the Revision Court on all the preliminary points considered by the trial Court, submitted that the sympathetic view taken by the Revision Court for granting leave to defend on deposit of Rs.25.00 Crores has been questioned in the petition filed by the Bank as the same is a manifest error in law. He submitted that the issues raised by the Corporation in its application filed under Order XXXVII Rule 3(5) of the Civil Procedure Code 1908 were frivolous and the Co-operative Court by its cryptic reasoning failed in gross errors in allowing the same. The Corporation being the State undertaking was obliged to repay the deposited amount of Rs.100.00 Crores with interest accrued thereon and it could not have been compared with a common litigant by the Courts below. The defence sought by the Corporation in the subject application was illusory or practically moonshine and the application was filed only to delay the summary recovery proceedings. He, therefore, prayed that the writ petition filed by the Corporation is required to be dismissed and the writ petition filed by the Bank deserves to be allowed by rejecting the application filed under Order XXXVII Rule 3(5) of C.P.C.

7. The Co-operative Court summarised its reasoning

in para 5 of its order dated 4.4.2003 and did not refer to any documents. Obviously, the applicant Corporation did not submit any document alongwith the said application, leave alone its written statement. It only stated that from various exhibits it appeared that the correspondence between the parties raised several questions and the main question regarding the jurisdiction as well as the maintainability of the dispute went to the root of the case. The learned Judge of the Co-operative Court further observed thus:-

> "According to me before passing any decree, it is necessary that the disputant has to prove beyond doubt on the point of jurisdiction, limitation, territorial jurisdiction and for ascertaining all these things in present dispute at hand proper adjudication is necessary. Another aspect is that, the claim of disputant is for Rs.113,81,42,814/-. as per the recent judgment passed by the Hon'ble Supreme Court Division Bench, Mumbai in writ petition No. 835 of 2002 in the case of Shamrao Vitthal Co-operative Bank Vs. M/s. Star Glass Work, in dispute filed for monetary claim exceeding Rs.10.00 lakhs, the jurisdiction of the Court goes to the Debt Recovery Tribunal. This aspect is also required to be considered. After considering these aspects, according to me unconditional leave to defend the dispute is required to be granted. If the conditional leave to defend the dispute is granted, then there will be multiplicity in the proceedings, there are several disputes to be decided on the point of maintainability as well as jurisdiction."

8. Revision Application No. 194 of 2003, filed by

the Bank was pending before the Revision Court for about 14 months and the Corporation chose not to file its reply in the same and, therefore, it came to be decided without any reply opposing the same. The learned Advocate General for the Corporation submitted that the Revision could be proceeded even without its reply and more so because the preliminary issues considered by the Co-operative Court were the legal issues.

9. Section 94 of the Act deals with the procedure and the powers of the Co-operative Court while adjudicating the disputes filed under Section 91 of the said Act. Sub-section 4 of Section 94 states that;-

> " Save as otherwise directed by the State Government in any case or class of cases, every dispute shall be decided in such summary manner as may be prescribed and as expeditiously as possible."

. It would be desirable to reproduce the provisions of Rule 77-F of the Rules.

> . **Rule 77-F. Summary procedure for deciding Disputes.-** (1) Subject to the provisions of sub-section (4) of section 94, the following disputes, if the disputant so desires, shall

be decided in the summary manner prescribed under this rule, namely:-

(a) any dispute for recovery of debt upon promissory note, hundi, bill of exchange or bond, with interest whether agreed upon under such instrument or under the bye-laws;

(b) any dispute for recovery of a fixed sum of money, in the nature of a debt, with or without interest, arising on a written contract, but other than penalty or on guarantee;

(c) any dispute for recovery of price of goods sold and delivered, where the rate, quality and quantity are admitted in writing;

(d) any dispute for recovery of dues payable in respect of a tenements by a member of a housing society towards contribution for consideration of the tenements, in respect of repayment of any loan, interest on loan, ground rent, local authority taxes, sinking fund, water charges, electric charge, repairs, maintenance and unkeep charges for other services rendered by the society and

the interest on such arrears payable under a written agreement or the bye-laws or the tenancy regulations.

(2) In such cases, the disputant shall, in addition to the normal averments in Form "P" make the following averments, namely:-

(a) that the claim of the disputants for recovery of liquidated sum of money only and no other relief beyond the scope of this rule is claimed in this dispute;

(b) that the disputant believes that there is no valid or bona fide defence to his claim.

(3) In such cases, the opponent shall not be entitled to defend the claim, unless he obtains leave from the Registrar or the Co-operative Court so to defend as hereafter in this rule provided, and in default of his obtaining such leave or of his appearing and defence in pursuance of such leave, the allegations in the petition shall be deemed to be admitted, and the disputant shall be

entitled to the award in his favour as prayed and for such sum of costs as may be awarded by the Registrar or the Court.

(4) (i) Within ten days from the service of a notice calling upon the opponent to obtain leave from the Registrar or the Court, to appear and defend the claim, the opponent or such of the opponents as are interested in defending the claim shall apply to the Registrar or the Court, as the case may be, by an affidavit or a declaration for the leave, setting out the facts on which he relief and what triable issues are likely to arise. The opponent shall in such application disclose all the documents supporting his contention and as far as possible attach copies of such documents which he considers important from his point of view. A copy of such application shall be served on the disputant and he shall have a right to file a rejoinder in the form of an affidavit or declaration and place before the deciding authority such material as in his opinion supports his contentions.

(ii) The Registrar or the Court, on reading the affidavits and declarations and on hearing the parties and their pleadings and considering the documents relief on and produced by them, may pass

as award or grant leave to defend to such of the opponents, unconditionally or upon such conditions, as the deciding authority may think fit under the circumstances and on facts of the case. The Registrar or the Court granting leave to defend shall also give directions and prescribe time limit for filing the written statements and fix the date for hearing. leave may be granted to some and may be refused to other opponents. If leave is granted and not complied with by any opponent, the deciding authority may pass an award against him, as if he had not been granted leave.

(iii) If the conditions on which leave to defend is granted are not complied with by any opponent, the Registrar or the Court may pass an award against him, as if had not been granted leave.

(iv) The Registrar or the Court may, for sufficient cause, execute the delay in applying for leave to defend any case.

(v) The Registrar or the Court may, under special circumstances, set aside the award, and if necessary stay or set aside execution, and may give leave to the opponent to appear and defend the dispute, if it seems reasonable to the deciding

authority so to do, and on such terms as it thinks fit.]

. The scheme of the above sub Rule states that the opponent defends the claim shall disclose all the documents supporting his contentions and as far as possible attach the copies of such documents, the Court on reading the affidavits and declarations and on hearing the parties and their pleadings, may pass an award or grant leave to defend such plea of the opponents, unconditionally or upon such conditions as it may thinks fit under the circumstances and on the facts of the case."

10. The Co-operative Court considered the issues regarding the membership of the Corporation, jurisdiction-territorial as well as pecuniary, limitation and authority of the Bank to invest huge amounts with the Corporation including whether such investments by deposits would be considered as a regular business of the Bank. As far as the issue of limitation is concerned, it is covered by Section 92 of the Act. Sub-Section 2 states that the period of limitation in the disputes which are not covered by Sub-section 1 shall be regulated by the provisions of the Limitations Act 1963, as if the disputes were a suit and the Co-operative Court a Civil Court.

Whereas Sub-section 3 of Section 92 states that the Co-operative Court may admit the dispute after the expiry of the period of limitation, if the applicant satisfies the Co-operative Court that he had sufficient cause for not preferring a dispute within such period and the dispute was admitted shall be a dispute which shall not be barred on the ground that the period of limitation had expired. Notwithstanding these, provisions of Section 92 it is necessary to consider the letter dated 21.8.2001 addressed by the Corporation to the Bank and as per the same all the three deposits i.e. Rs. 30.00 Crores, Rs. 20.00 Crores and Rs.50.00 Crores were renewed and the renewal period was due to expire on 20.3.2002, 20.3.2002 and 6.8.2002 respectively. As noted little while ago, the Bank approached the Co-operative Court for recovery on or about 20.11.2002 and, therefore, on the face of it the issue of limitation would not rise. The Co-operative Court thus committed manifest error in holding that the issue of limitation was one of the issue which went to the root of the dispute.

11. As far as the pecuniary jurisdiction is concerned, the decision of this Court (Full Bench) in the case of Shamrao Vitthal Co-operative Bank (supra) has been stayed by the Supreme Court and subsequently this Court in the case of Associated Cosmo Trading

Pvt. Ltd. Vs. the State of Maharashtra (Writ Petition No. 2642 of 2003) by its order dated 21.6.2004 has clarified that consequent to the stay order granted by the Apex Court, the view taken by the Full Bench in the case of Shamrao Vitthal Co-operative Bank (supra) would not govern the field regarding the pecuniary jurisdiction. It appears that the order passed by this Court in the case of Associated Cosmo Trading Pvt. Ltd., was not brought to the notice of the Co-operative Court and the Revision Court rightly took a note of it and held that the issue of pecuniary jurisdiction did not arise at leaset at present.

. On the issue of territorial jurisdiction, the Bank in its Revision Application placed on record various documents executed between the parties. The Promissory notes at Exh. F-1 to F-3 and the deeds of continuing guarantees at Exh. G-1 to G-3, have been considered by the Revision Court. The document at Exh. F-1 has been executed at Mumbai and same is the case with documents at Exh.G-1 to G-3. The documents at Exh. F-2 and F-3 did not indicate with certainty that they were executed at Mumbai. However, if regards be had to the corresponding deeds of continuity guarantee at Exh. G-2 and G-3 it has to be inferred that the said Promissory notes were also executed at Mumbai. The amounts of deposits made on

26.3.1998, 29.5.1998 and 6.8.1999 totalling to Rs.100.00 Crores were released at Mumbai and the Corporation has its Zonal Office at Mumbai located at 10/12, Mandlik Road, Mathuradas Building No.2, at Colaba. Thus, the substantial cause of action arose at Mumbai and not outside Mumbai. The issue of territorial jurisdiction, therefore, has been rightly considered by the Revision Court and it corrected the manifest error committed by the trial Court.

12. Regarding the membership of the Corporation, it was contended that there was no proof that it was admitted as a member of the Bank before the first instalment of Rs.30.00 Crores was released. This also has been answered by the Bank by bringing on record the prima facie proof i.e. the application for membership signed by Mr. M.L. Swarnkar, Dy. General Manager of the Corporation. This application has been signed at Mumbai on 26.3.1998 and whether it was signed by an authorised Officer or not is an issue which would have to be gone into while deciding the main dispute but the document prima facie supports the plea of the Bank that the Corporation was admitted as a nominal member under its bye-law No.13.

13. In the case of Santoshkumar Vs. Bhai Mool Singh (supra) and Mikharam Vs. Chamanlal Brothers (supra),

the position of law has been explained regarding the principles governing the application filed under Order XXXVII Rule 3(5) of C.P.C. The following propositions have been set up:-

(a) If the defendant satisfies the Court that he has a good defence to the claim on merits,the defendant is entitled to unconditional leave to defend.

(b) If the defendant raises a triable issue indicating that he has a fair or bona fide or reasonable defence, although not a possibly good defence, the defendant is entitled to unconditional leave to defend.

(c) If the defendant discloses such facts as may be deemed sufficient to entitle him to defend, that is, if the affidavit discloses that at the trial he may be able to establish a defence to the plaintiff’s claim, the court may impose conditions at the time of granting leave to defend - the conditions being as to time of trial or mode of trial but not as to payment into court or furnishing security.

(d) If the defendant has no defence, or if the

defence is sham or illusory or practically moonshine, the defendant is not entitled to leave to defend.

(e) If the defendant has no defence or the defence is illusory or sham or practically moonshine, the court may show mercy to the defendant by enabling him to try to prove a defence but at the same time protect the plaintiff imposing the condition that the amount claimed should be paid into court or otherwise secured.

. In the case of John Impex Pvt. Ltd. (supra) the Supreme Court observed that the purpose of introducing a provision like leave to defend, is only to find out frivolous, incontestable cases at the initial stage, not to eliminate other class of cases which require adjudication after contest. In other words if there be no conceivable contest possible the litigation has to be nipped in the bud.

14. In the instant case the Corporation does not dispute the investment of Rs.100.00 Crores made by the Bank and the letters brought on record and particularly the letters dated 31.3.2001, 2.5.2001 and 21.8.2001 have clearly admitted the deposits with interest at 16% per annum. The last letter dated

9.9.2004 addressed by the Law Officer of the Corporation to the Chairman of the Bank admits the liability as follows:-

Total Deposits received by MPSIDC (including Rs.10.00 Crores short Term deposit)	Rs.110.00 Crores
Less: Amount paid so far	Rs. 58.76 Crores
Balance to be paid	Rs. 51.24 Crores

Schedule of repayment:

Down payment on mutual agreement	Rs. 2.24 Crores
Balance to be paid in 7 years equal interest free instalments of Rs.7.00 Crores per year	Rs. 49.00 Crores
Total	Rs. 51.24 Crores

15. The Corporation is an Undertaking of the State of Madhya Pradesh and inspite of the fact that the Bank has taken recourse to the appropriate remedies from time to time, it did not respond to discharge its liabilities fully. As noted by the Revision Court it has paid an amount of Rs.58.76 Crores prior to the filing of the dispute. Nevertheless the balance payment even as agreed by the Corporation in its letter dated 9.9.2004 comes to Rs.51.24 Crores. On the face of these admitted liabilities, the application submitted by the Corporation seeking leave to defend unconditionally was certainly frivolous and the issues raised in the said application would not come in the way of deciding the

Summary proceedings. The approach of the Corporation does not go well with its status as an Undertaking of the State Corporation. The sympathetic view taken by the Revision Court is, therefore, uncalled for in the peculiar facts and circumstances of this case. A substantial liability has been admitted by the Corporation from time to time and what was mainly disputed was only the interest amount and in the Summary proceedings the directions to deposit Rs.25.00 Crores are unsustainable. The balance of at least Rs.51.00 Crores plus is an admitted liability by the Corporation. Under the circumstances the order of the Revision Court also has to be set aside and the Corporation does not deserve the so called sympathetic view taken. The law laid down in the case of Santoshkumar (supra) goes against the Corporation on the fact of the admitted amount due to the Bank.

16. In the result, the writ petition No.9477 of 2004 stands dismissed and the writ petition No.9859 of 2004 is hereby allowed. The application filed by the Corporation for leave to defend under Order XXXVII Rule 3(5) of the Code of Civil Procedure, 1908 before the Co-operative Court, is hereby rejected. Rule made absolute accordingly with no order as to costs.

17. Writ to go forthwith.

18. At this stage, Mr. Jain, the learned counsel for the Corporation submitted an oral application for stay to the above order for eight weeks. Oral application is hereby rejected.

19. Certified copy is expedited.